UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIN, ET. AL,	)	
	)	
Plaintiffs,	)	Civil Action No. 06-1825 (RMC)
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

Defendant's Motion to Dismiss

Defendant United States of America, by and through its undersigned counsel, hereby moves this Court to dismiss this action with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) or, in the alternative, 12(b)(6) for the reasons set forth in the accompanying Memorandum.

Dated: April 5, 2007

Respectfully submitted,
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MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Plaintiffs, ten individuals who allege that they reside in Taiwan and The Taiwan Nation Party, claim that the individuals were denied rights and privileges as United States nationals. They base their entire claim on the false premise that the United States exercises de jure sovereignty over Taiwan, a premise which implicitly asks this Court to declare that 23 million Taiwanese are nationals of the United States. The political branches have made it clear, however, that the United States does not exercise sovereignty over Taiwan. It is a long standing principle that courts defer to the political branches when there is a question of sovereignty. Because this action presents a non-justiciable political question, this Court lacks subject matter jurisdiction. In bringing this action, plaintiffs also ignore the statutory language that explicitly does not confer nationality status on the Taiwanese people. Therefore, plaintiffs' action seeking a declaration of rights associated with nationality status does not state a claim upon which relief may be granted. Accordingly, this Court should dismiss this action with prejudice.

BACKGROUND

I. PROCEDURAL HISTORY

On October 24, 2006, plaintiffs filed a complaint against the United States, alleging that the United States is "holding sovereignty over Taiwan." See Plaintiffs' Complaint ("Compl.") (Dkt. #1) at ¶ 49. Plaintiffs asked this Court to "determine what fundamental rights, if any, they may have under United States laws." Id. at ¶ 3. Defendant filed a motion to dismiss on January 12, 2007. See Defendant's Motion to Dismiss (Dkt. #6). After plaintiffs filed their opposition and defendant filed its reply, plaintiffs amended their complaint. See Plaintiffs' Amended Complaint ("Pl. Am. Compl."). This Court denied as moot defendant's motion to dismiss the original complaint. See Minute Order, March 23, 2007.

The amended complaint is brought by ten individuals and the Taiwan Nation Party. See Pl. Am. Compl. "Plaintiffs seek a declaration that they have rights and privileges as United States nationals (as opposed to citizens)." Id. at ¶ 7. They claim that they are nationals of the United States because the United States is allegedly "holding de jure sovereignty over Taiwan." Id. at ¶ 69. This complaint is more narrow than their original complaint. Plaintiffs now allege that they have been denied "rights and privileges as United States nationals." Id. at ¶ 71. Specifically, they claim that the American Institute of Taiwan ("AIT") "refused to accept and process [their] passport applications" and that this alleged refusal "constituted a denial of their status as United States nationals, and of their rights and privileges as United States nationals."

Id. at ¶¶ 77, 78. They seek a declaration that the individuals are United States nationals. Id. at VII (b) (Relief Requested).[1]

II. UNITED STATES' RELATIONS WITH TAIWAN[2]

As a matter of law, the relationship between the United States and Taiwan derives solely and exclusively from Exec. Order No. 13014 of August 15, 1996, 61 Fed. Reg. 42963 (superseding Exec. Order No. 12143 of June 22, 1979, 44 Fed. Reg. 37191), and the Taiwan Relations Act of 1979, 22 U.S.C. 3301, et seq. That intricate relationship does not involve the United States exercising sovereignty over Taiwan.

Prior to 1979, the United States recognized the government of the Republic of China ("ROC") and considered Taiwan to be part of the ROC, belying plaintiffs' assertion that "Taiwan has been an occupied territory of the United States" since the end of World War II. See Pl. Am. Compl. at ¶ 52. The Mutual Defense Treaty signed between the United States and the ROC in 1954 specified that the ROC included the territory of Taiwan. See Mutual Defense Treaty, Article VI, Treaties and International Acts Series 3178 (1955) ("the terms 'territorial' and 'territories' shall mean in respect of the Republic of China, Taiwan and the Pescadores; and in respect of the United States of America, the inland territories in the West Pacific under its

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[1]Even if construed more broadly, and plaintiffs are seeking a declaratory judgment that they are entitled to certain "fundamental rights under the United States Constitution and laws," such as those set out in their requests for relief, see Pl. Am. Compl. at ¶ 7, VII (Relief Requested), then for the reasons that defendant stated in its motion to dismiss plaintiffs' original complaint and in its reply to plaintiffs' opposition, this Court lacks jurisdiction and plaintiffs fail to state a claim upon which relief may be granted to bring any such claim. See Defendant's Motion to Dismiss (Dkt. #6); Defendant's Reply to Plaintiffs' Opposition (Dkt. #12).

[2]For the Court's information, a history of the United States relations with Taiwan is available at the U.S. Department of State's Country Page on China, http://www.state.gov/p/eap/ci/ch/.

jurisdiction"). In 1979, President Carter terminated the Mutual Defense Treaty, see U.S. Department of State Bulletin, Vol. 79 (1979), No. 2023 at 25, but that does not negate the fact that prior to 1979, it was the policy of the United States that the ROC included Taiwan. Significantly, prior to 1979, the United States negotiated with the ROC, in the capacity as sovereign, numerous other international agreements that applied to Taiwan. See generally Treaties in Force (2006) at 361, 362.

On December 30, 1978, President Carter issued a memorandum maintaining that the "United States has announced that on January 1, 1979, it is recognizing the government of the People's Republic of China as the sole legal government of China and is terminating diplomatic relations with the Republic of China." 44 Fed. Reg. 1075. President Carter further stated that the "[e]xisting international agreements and arrangements in force between the United States and Taiwan shall continue in force." Id. (emphasis added). Besides continuing the international agreements that the United States entered into with Taiwan prior to January 1, 1979, President Carter's memorandum stated that "[a]s President of the United States, I have constitutional responsibility for the conduct of the foreign relations of the nation." 44 Fed. Reg. 1075; see also Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964) ("[p]olitical recognition [of a government] is exclusively a function of the Executive"). In his memorandum, President Carter also stressed that the "American people will maintain commercial, cultural, and other relations with the people on Taiwan without official government representation and without diplomatic relations." 44 Fed. Reg. 1075. In executive orders in 1979 and 1996, the Executive further spelled out the manner in which the United States is to maintain unofficial relations with the people of Taiwan. See Exec. Order No. 13014 (August 15, 1996); Exec. Order No. 12143 (June

22, 1979). That 1996 Executive Order also specified that the "[a]greements and arrangements referred to in paragraph (B) of President Carter's memorandum of December 30, 1978, entitled 'Relations With the People on Taiwan' (44 FR 1075) shall, unless otherwise terminated or modified in accordance with law, continue in force." Exec. Order No. 13104 (August 15, 1996).

Besides issuing executive orders and presidential memorandums concerning the status of Taiwan, the United States also issued a series of joint communiques between 1972 and 1982 with the People's Republic of China ("PRC"). Those communiques included discussion of the status of Taiwan. In the February 28, 1972, Communique, the United States acknowledged "that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China." See United States of America-People's Republic of China Joint Communique of Feb. 27, 1972 [The Shanghai Communique]--U.S. Department of State Bulletin, Vol. 66 (1972), No. 1708, at 435 (attached as Exhibit 1). In 1979, the two countries issued another Joint Communique regarding the establishment of diplomatic relations between the PRC and the Untied States. See United States of America-People's Republic of China Joint Communique of January 1, 1979 on Establishment of Diplomatic Relations--U.S. Department of State Bulletin, Vol. 79 (1979), No. 2022, at 25 (attached as Exhibit 2). In that Communique, the United States again acknowledged the "Chinese position that there is but one China and Taiwan is part of China." Id. In a third Communique in 1982, the United States agreed that "[r]espect for each other's sovereignty and territorial integrity and non-interference in each other's internal affairs constitute the fundamental principles guiding United States China relations." See United States of America-People's Republic of China Joint Communique of Aug. 17, 1982--Weekly Compilation of Presidential Documents (August 23, 1982), at 1039 (attached as Exhibit 3). The

United States and the PRC also "agreed that the people of the United States would continue to maintain cultural, commercial, and other unofficial relations with the people of Taiwan." Id.

The political branches have also charted the United States' relationship with Taiwan through the Taiwan Relations Act of 1979, 48 U.S.C. § 3301, which was passed by Congress and signed into law by the President. Congress found that the enactment of this statute was "necessary - (1) to help maintain peace, security, and stability in the Western Pacific; and (2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people of Taiwan." See 22 U.S.C. § 3301(a). Furthermore, it declared that the policy of the United States is, inter alia, "to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means." 22 U.S.C. § 3301(b)(3). Congress specifically stated in the Taiwan Relation Act that it approved "the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law." See 22 U.S.C. § 3303(c) (emphasis added). The United States now exercises nonofficial relations with Taiwan through the American Institute in Taiwan, a "nonprofit corporation incorporated under the laws of the District of Columbia." See 22 U.S.C. §§ 3305, 3310a ("[t]he American Institute of Taiwan shall employ personnel to perform duties similar to those performed by personnel of the United States and Foreign Commercial Service.").

ARGUMENT

I. LEGAL STANDARDS

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868). The Court, of course, "always [has] jurisdiction to determine [its] jurisdiction." Nestor v. Hershey, 425 F. 2d 504, 511 (D.C. Cir. 1969); accord Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 93-94 (1998) (federal court may not decide merits before determining whether it has jurisdiction over a case). A Court must accept all of the non-movant's factual allegations as true when reviewing a motion to dismiss under Rule 12(b)(1), but such allegations will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a Rule 12(b)(6) motion for failure to state a claim." Brady Campaign to Prevent Gun Violence United With the Million Mom March v. Ashcroft, 339 F. Supp. 2d 68, 72-73 (D.D.C. 2004) (internal citation, brackets, and quotation marks omitted). "A Court may also consider material beyond the allegations in the plaintiff's complaint when determining whether it has subject matter jurisdiction pursuant to Rule 12(b)(1)." Id. at 73.

A complaint should be dismissed pursuant to Rule 12(b)(6) "if it appears beyond doubt that no set of facts proffered in support of plaintiff's claim would entitle him to relief." Meng v. Schwartz, 116 F. Supp. 2d 92, 95 (D.D.C. 2000). In evaluating a Rule 12(b)(6) motion, a court "should presume the allegations to be true and liberally construe them in favor of the plaintiff." Id. At the same time, "legal conclusions, deductions, or opinions couched as factual allegations are not given a presumption of truthfulness," id. (citations and internal quotation marks omitted),

nor are unwarranted inferences drawn by the plaintiffs. See Logan v. Dep't of Veteran Affairs, 357 F. Supp. 2d 149, 153 (D.D.C. 2004); see also Trudeau v. Federal Trade Comm'n, 384 F. Supp. 2d 281, 288 (D.D.C. Aug. 25, 2005) ("[c]onclusory legal and factual allegations, however, need not be considered by the court" in deciding a Rule 12(b)(6) motion).

II. THIS COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS ACTION

For a lower federal court to have subject matter jurisdiction, the action must present a case or controversy pursuant to Article III, §2, of the United State Constitution and there must be a statutory basis for the jurisdiction. See Insurance Corp. of Ireland, LTD. v. Compagnie des Bauxites de Guniee, 456 US 694, 701-2 (1982) ("[f]ederal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend are delineated in Article III, § 2, cl. 1. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal juridical power: Apart from [the Supreme Court] that power only exists 'in such inferior Courts as the Congress may from time to time ordain and establish.' Art. III, § 1.").

"The political question doctrine is one aspect of 'the concept of justiciability, which expresses the jurisdictional limitations imposed on the federal courts by the 'case or controversy' requirement' of the Article III of the Constitution." Bancoult v. McNamara, 445 F.3d 427, 432 (D.C. Cir. 2006) (quoting Schlesinger v. Reservists Committee to Stop the War, 418 U.S. at 215). The doctrine is "primarily a function of the separation of powers." Id. (quoting Baker v. Carr, 369 U.S. 186, 210 (1962)) (quotation marks omitted). It "excludes from judicial review those controversies which revolve around policy choices and value determinations

constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." Id. (quoting Japan Whaling Ass'n v. Am Cetacean Soc'y, 478 U.S. 221, 230 (1986)) (quotation marks omitted).

The entire basis for plaintiffs' claims that they are nationals of the United States is that the United States is allegedly exercising sovereignty over Taiwan. See Pl. Am. Compl. at ¶ 69 ("[c]onsidering that the United States is holding de jure sovereignty over Taiwan, the Taiwanese people owe permanent allegiance to the United Sates and have the status of United States nationals (as opposed to citizens)"). However, the determination of who is sovereign of a territory is non-justiciable. See Jones v. United States, 137 U.S. 202, 212 (1890) ("[w]ho is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.") (citing cases as far back as 1818) (emphasis in original); Boumediene v. Bush, 476 F.3d 981, 992 (D.C. Cir. 2007) cert. denied, __ S.Ct. __, 2007 WL 957363 (2007) ("[t]he determination of sovereignty over an area, the Supreme Court has held, is for the legislative and executive departments.") (emphasis added) (internal citations omitted).

The "judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory." Baker, 369 U.S. at 212. The political branches have made it clear that the United States does not exercise sovereignty over Taiwan and that Taiwan is not a territory subject to the jurisdiction of the United States. See e.g., Exec. Order No. 13014 (August 15, 1996), 61 Fed. Reg. 13014 ("[i]n light of the recognition of the People's Republic of China by

the United States of America as the sole legal government of China," this Order is to "facilitate the maintenance of commercial, cultural, and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations"); Taiwan Relations Act of 1979, 22 U.S.C. § 3301(b)(3) (declaring that the policy of the United States is, inter alia, "to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means.").

This case falls squarely within the criteria that the Supreme Court has identified as presenting a non-justiciable political question. See Baker, 369 U.S. at 217 (listing the criteria a court is to use for analyzing whether a cause of action presents a non-justiciable political question). For this Court to issue a ruling in this case declaring the United States sovereign over Taiwan - contrary to the explicit position of the political branches that the United States exercises no sovereign authority over Taiwan - would have the "potentiality of embarrassment from multifarious pronouncements by various departments on one question." See id. at 217. This Court would have to make an "initial policy determination of a kind clearly for nonjudicial discretion" to go beyond the path chosen by the political branches of the government, which would show a "lack of the respect due coordinate branches of government." See id. Furthermore, due to the delicate relationship between the United States and the PRC, and the need to preserve the stability and peace in the Taiwan Strait, there is "an unusual need for unquestioning adherence to a political decision already made." See id. In addition, it is unclear what "judicially discoverable and manageable standard" this Court would use in determining the default status of a territory that was referenced by Douglas MacArthur's General Order dictating

the terms of Japan's surrender at the end of World War II. See id.; see also Pl. Am. Compl. at ¶ 4 (claiming that MacArthur's order created an "agency relationship" that has not been "altered by any other subsequent legal instrument" "between the principal, the Allied Powers led by the United States, and the agent, the ROC, for the purpose of Taiwan's occupation."). These issues are directly related to the prominence of a "demonstrable constitutional commitment of [the determination of who is a sovereign of a territory] to a coordinate political department." See Baker, 369 U.S. at 217.

Resolving the merits of this action would not just intrude on the delicate relationship between the United States and the PRC, but would also "require the court to determine the effects on [] agreements on the rights of [] citizens with respect to events occurring outside the United States." See Hwang Geum Joo v. Japan, 413 F.3d 45, 51-53 (9th Cir. 2005) (holding that it is a non-justiciable political question to decide "whether the governments of the [plaintiffs in the case] resolved their claims in negotiating peace with Japan" following World War II, because it "would be inimical to the foreign policy interests of the United States" for "a court in the United States to decide whether Korea's or Japan's reading of the treaty between them is correct, when the Executive has determined that choosing between the interests of two foreign states in order to adjudicate a private claim against one of them would adversely affect the foreign relations of the United States") (citation omitted). For this Court to decide this case, it would need not only to look to the treaties and agreements involving the United States but would also have to interpret the treaty between the ROC and Japan. See Pl. Am. Compl. at ¶ 48 ("[t]he Treaty of Peace between the ROC, which was signed on April 28, 1952, and entered into force on August 5, 1952 (the 'Treaty of Taipei'), did not transfer sovereignty over Taiwan from Japan

to China"). Given that this case not only presents questions best left to the political branches of the United States but also involves diplomatic relations between other countries, this action should be dismissed because it presents non-justiciable political questions.

III. PLAINTIFFS FAIL TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Plaintiffs allege that AIT "or its officials denied individual [p]laintiffs' rights and privileges as United States nationals." See Pl. Am. Compl. at ¶ 71. It appears that this claim is brought under the Immigration Nationality Act ("INA") § 360, 8 U.S.C. § 1503, which allows an individual to bring a declaratory judgment action if a person claims to be United States national and is denied "such right or privilege . . . upon the ground that he is not a national of the United States." See 8 U.S.C. §§ 1503. However, plaintiffs have failed to state a claim under this statute because their entire basis for asking this Court to declare that they are nationals of the United States is that they reside in Taiwan. See Plaintiffs' Amended Complaint ("Pl. Am. Compl.") at ¶ 69 ("the Taiwanese people owe permanent allegiance to the United States and have the status of United States nationals (as opposed to citizens)"). But plaintiffs are not nationals of the United States. The mere fact that they are from Taiwan does not meet the statutory definition of nationality upon which they are relying because their claim is based on the faulty premise that the "United States is holding de jure sovereignty over Taiwan." See id. In charting the United States relations with Taiwan, the political branches have repudiated plaintiffs' claim that the United States is sovereign over Taiwan. Therefore, plaintiffs do not state a claim upon which relief may be granted because they could not have been denied rights and privileges as United States nationals if they are not United States nationals.

Merely being from Taiwan does not meet the statutory definition of who is considered a national of the United States. The statute explicitly states that "[t]he term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." See 8 U.S.C. § 1101(a)(22). Plaintiffs are not alleging that they are citizens, so their entire basis for claiming nationality status is 8 U.S.C. § 1101(a)(22)(B). See Pl. Am. Compl. at ¶¶ 7, 69 (claiming that they are "nationals (as opposed to citizens)"). Plaintiffs' manifestation that the "Taiwanese people owe permanent allegiance to the United States," see Pl. Am. Compl. at ¶ 69, is not sufficient for them to fall under that statutory provision. See Marquez-Almanzar v. INS, 418 F.3d 210, 218-219 (2nd Cir. 2005) (holding that "one cannot qualify as a U.S. national under 8 U.S.C. § 1101(a)(22)(B) by a manifestation of 'permanent allegiance' to the United States"); see also Abur v. Republic of Sudan, 437 F. Supp. 2d 166, 176-77 (D.D.C. 2006) (discussing different Circuit opinions). Rather, that provision must be "read in the context of the general statutory scheme" and "the only 'non-citizen nationals' currently recognized by our law are persons deemed to be so under 8 U.S.C. § 1408." Marquez-Almanzar, 418 F.3d at 217, 219.

The individual plaintiffs have failed to state a claim that they meet the criteria under 8 U.S.C. § 1408 for being considered United States non-citizen nationals. Section 1408 defines a non-citizen national as a "person born in an outlying possession of the United States on or after the date of the formal acquisition of such possession." See 8 U.S.C. § 1408(1).[3] But, Taiwan is

[3]Section 1408 defines three other situations for a person to be considered a non-citizen national, but plaintiffs are not making any allegations related to those situations. Plaintiffs have not alleged that their parents are nationals and have residences in the United States, see 8 U.S.C. § 1408(2), that they are of an unknown parentage found in an outlying possession of the United States while under the age of five, 8 U.S.C. § 1408(3), or that one of each of their parents are

not an outlying possession of the United States. The statute defines "outlying possessions of the United States" as being "American Samoa and Swains Island." See 8 U.S.C. § 1101(a)(29); see also Miller v. Albright, 523 U.S. 420, 467 n.2 (1998) (Ginsburg, J., dissenting) ("[n]ationality and citizenship are not entirely synonymous; one can be a national of the United States and yet not a citizen. 8 U.S.C. § 1101(a)(22). The distinction has little practical impact today, however, for the only remaining noncitizen nationals are residents of American Samoa and Swains Island.") (emphasis added); Abur v. Republic of Sudan, 437 F. Supp. 2d at 176-77. Considering that plaintiffs are not nationals by virtue of being from Taiwan, plaintiffs have failed to state a claim upon which relief may be granted because they are not entitled to rights or privileges as United States nationals.

Besides it being clear from the statute that Taiwan is not considered an outlying possession of the United States, the political branches have also made it clear that the United States does not exercise sovereignty over Taiwan. See, supra, at 8-12. This alleged sovereignty by the United States over Taiwan is the foundation for plaintiffs' claim that they are United States nationals. See Pl. Am. Compl. at ¶ 69 ("[c]onsidering that the United States is holding de jure sovereignty over Taiwan, the Taiwanese people owe permanent allegiance to the United States and have the status of United Sates nationals (as opposed to citizens)"). Because plaintiffs cannot claim they are nationals of the United States merely because they are from Taiwan, plaintiffs have failed to state a claim under the INA § 360, 5 U.S.C. §§ 1503.

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nationals of the United States and who were present in the United States for at least seven years during a "continuous period of ten years," see 8 U.S.C. § 1408(4). Rather, they have alleged that they are entitled to nationality status because of their claim that the "United States is holding sovereignty over Taiwan." See Pl. Am. Compl. at ¶ 69.

CONCLUSION

For the reasons stated above, defendant respectfully requests this Court to grant its motion to dismiss.

Dated: April 5, 2007

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